

CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Roger Eastman, Zoning Code Administrator
Community Development Department, 928/779-7632

Rick Compau, Purchasing Director, 928/779-7619
Management Services, Purchasing Division



Date: December 29, 2008

Meeting Date: January 6, 2009

Title: Acceptance of proposal and award of contract to Opticos Design, Inc. for professional services for restructure and rewrite of existing land development code and zoning ordinance.

Recommended Action:

Approve the contract for professional services for restructure and rewrite of existing land development code and zoning ordinance to Opticos Design, Inc. of Berkeley, California for a dollar amount not to exceed \$459,405.

ACTION SUMMARY:

The Purchasing Division conducted a formal Request for Proposal (RFP) process in which there were a total of nine (9) proposal responses that were evaluated according to the established evaluation criteria set forth in the RFP document. The evaluation committee considers Opticos Design, Inc. to be the most qualified vendor, given the evaluation criteria set forth in the RFP document.

DISCUSSION:

Background/History:

The City of Flagstaff Planning and Development Services Section invited qualified planning consultants, urban designers and multi-disciplinary firms to submit a written proposal in response to a Request for Proposals (RFP) to provide professional services for the purpose of restructuring and redrafting the existing City of Flagstaff zoning ordinance to create an innovative and integrated zoning ordinance based on Smart Growth principles.

The City of Flagstaff's zoning ordinance or Land Development Code (LDC) is adopted in accordance with Arizona Revised Statutes in order to further the legislative intent of *"protecting and promoting the public health, safety and general welfare of the citizens of Flagstaff, providing for orderly growth"*, etc. (LDC Division 10-01-002).

The purpose of the LDC is further established in Division 10-01-003, and may be summarized as:

- Furthering the legislative intent, i.e. protecting the public health, safety and general welfare of the citizens of Flagstaff;
- Organizing all the regulations for the development of land within the City;
- Organizing the regulations in *"a form which is comprehensive, straightforward, and easily understood and usable"*;
- The implementation of the adopted General Plan (i.e. Flagstaff Area Regional Land Use and Transportation Plan or Regional Plan).

The LDC in its current format is a complex document because it includes numerous zoning methodologies that have been added to it over the past few years. These include:

- Conventional use-based zoning provisions that date back to the 1970s and before;
- Performance based zoning provisions added in 1991;
- Design review guidelines adopted in 2002 that apply to multi-family residential, commercial, institutional and business park developments; and
- Traditional neighborhood standards based on the Smart Code requiring a form-based code for a Traditional Neighborhood District adopted in November 2007.

The 1991 code revisions combined the former zoning ordinance and subdivision ordinance from the City Code into a consolidated Land Development Code (LDC). The LDC was restructured and formatted at that time. The original 17 conventional zoning districts were retained and are identified as "Established" or "E" districts, for example, the C-3-E (Highway Commercial District Established) zoning district. In addition, 18 new zoning districts were added. These districts do not have the "E" designation (for example, UC (Urban Commercial district)), and they are applied through the application of performance-based zoning techniques developed by Lane Kendig and Associates.

Since 1991 the LDC has been amended numerous times to resolve conflicts, add new provisions, and ensure consistency with Arizona statutes. In addition, three overlay historic zoning districts have been adopted as well as the Traditional Neighborhood District.

While the LDC has many strengths (for example, the natural resource protection standards applied within the new zoning districts have ensured the preservation of trees, slopes and floodplains in new developments and the City's exterior lighting standards led Flagstaff to be declared the First International Dark Sky City in October 2001), it also has some significant weaknesses that include the following:

- a. While the LDC is certainly comprehensive, it is not in *"a form which is comprehensive, straightforward, and easily understood and usable"*. Indeed,

the LDC's complex concepts and standards as well as its weak organizational structure have made it very hard for citizens and staff to use the document.

- b. The LDC is essentially a Euclidian or conventional code that separates land uses into distinctly different land use categories. In its current format of segregating land uses it illustrates a general lack of relevancy and unresponsiveness to address new market directions and emerging trends within the planning profession and development community, such as Smart Growth and the promotion of mixed-use concepts that have been proven in many cities across the US.
- c. The LDC can be difficult to use and interpret, especially as it includes both Euclidian and performance-based provisions.
- d. Numerous amendments over the years have led to a disjointed code that lacks good internal or external cross references. It is also not logically organized and many development standards are hard to find.
- e. In general the LDC lacks consistency with the Regional Plan, and in some respects fails to implement it properly.
- f. Some provisions (such as the measurement of building height and the method for determining tree preservation on a parcel) produce results inconsistent with community goals.
- g. In general the LDC lacks consistency, clarity and predictability. This has been a frequent concern to citizens and developers.
- h. The LDC includes an unnecessary number of zoning districts – 39 in total with 32 actually mapped on the zoning map (both “Established” and “new” created in 1991).
- i. As noted above, the majority of the LDC is at least 17 years old (some parts are much older).

In summary, the LDC requires modernization, codification and improvement. The desired zoning ordinance (it will have a new name) will be coherent, integrated, concise, consistent, innovative, and user friendly.

The purpose of the RFP released on July 18, 2008 was to select a planning consultant to produce an innovative and integrated zoning code for the City of Flagstaff that uses the existing provisions of the LDC expanded, modified and deleted as necessary within the restrictions of applicable State law to produce a zoning code that;

- 1. Is based on sound principles of Smart Growth, mixed-use and sustainable development. (See the narrative below for more information on this subject).
- 2. Is consistent with the adopted Regional Plan and is coordinated with the future amendments proposed to the Regional Plan.
- 3. Is logically organized and easy to read and understand.
- 4. Includes an extensive use of graphics to illustrate key points and minimize the amount of text.
- 5. Is consistent in terms of processes and requirements.

6. Reduces the number of zoning districts provided in the Code and on the zoning map where possible, by combining or removing districts.
7. Involves the public in a meaningful and effective way using appropriate public participation techniques.
8. Is easily expanded and amended in the future to respond to changing market and socio-economic conditions.

The work program as described in the RFP involves a comprehensive assessment and analysis of the LDC so that strategies for the restructuring and redrafting of the Code can be recommended. A review and assessment of applicable Arizona revised statutes relative to the LDC is also contemplated within this first phase. The first phase would be followed by the drafting of a revised and reformatted zoning ordinance inclusive of revised procedures, revised zoning districts, detailed regulations, a revised zoning map, etc, and the identification of areas within the City where Form-Based Codes could be completed. A public participation plan must be included as part of the response to the RFP explaining how the public will be informed and involved throughout the process of rewriting the LDC.

In November 2006, Arizona voters approved Proposition 207 which has now been incorporated into the Arizona statutes in Sections 12.1131 – 12.1138. The RFP also specifically required the successful consultant planning team to understand the possible implications of these statutes as they apply to the reassignment of zoning districts, rezoning of property, and the possible amendment of existing development standards.

Staff developed a Request for Proposals (RFP) by the LDC rewrite project based on the guidelines and template for RFPs available on the American Planning Association's web page as well as RFPs put out by other City's for similar projects. On July 18, 2008 the RFP was posted on the City of Flagstaff web page, as well as the web pages for the American Planning Association, Congress for the New Urbanism and the Form-Based Code Institute. Additionally, the RFP was mailed to a number of planning firms who staff knew were qualified to complete this project.

On the submittal deadline for proposals at 3:00 pm on September 2, 2008, a total of nine firms had submitted responses to the RFP.

As detailed in the memorandum to the City Council for the December 23, 2008 work session, the Selection Committee finally recommended Opticos Design, Inc. as the preferred planning consultant to work with staff on the LDC rewrite project.

Key Considerations:

As noted in the section below on Community Benefits and Considerations, there are numerous advantages to hiring Opticos Design Inc. to assist with a comprehensive rewrite of the LDC. Flagstaff residents and developers, and indeed the City staff, have struggled with and been frustrated by the problems and issues associated with the current LDC for many years now. The need for this updating and rewriting project could not be timelier,

many years now. The need for this updating and rewriting project could not be timelier, especially as the code update project will dovetail well with the current project to update the Regional Plan in accordance with state statutory requirements. This will ultimately result in much needed consistency between the LDC and the Regional Plan.

However, under the City's current fiscal challenges, staff acknowledges that approval of half a million dollars to a project of this scale and complexity by the City Council will be difficult. Staff has therefore suggested a number of alternatives below that we will discuss in more detail with the Council in the January 6, 2009 meeting.

Community Benefits and Considerations:

Updating the LDC at this time will result in the following community benefits;

- Staff has already commenced the important work of updating the Regional Plan. A window of opportunity is therefore available to ensure that the LDC and Regional Plan are consistent. Staff has established protocols and procedures to ensure that both planning projects will be completed in a truly comprehensive planning format. As a result the current inconsistencies between the Regional Plan and the LDC will be removed.
- The LDC will be rewritten in a form that is comprehensive, straight forward and easily understood and illustrated with the extensive use of graphics making it much easier for citizens and staff to use.
- Existing inconsistencies and redundancies will be resolved and removed.
- The revised and updated LDC will be responsive to current trends in planning practice and market conditions that will help to further growth and development in Flagstaff.
- The revised LDC will be up-to-date and consistent with state statutes.
- The revised and updated LDC is intended to promote Smart Growth concepts for mixed-use and sustainable development.
- The residents of Flagstaff will have numerous opportunities to participate in the rewriting of the LDC as well as to stay informed of progress.
- The final code document will be structured in such a manner that it will be easily expanded and amended in the future to respond to changing market and socio-economic conditions.
- Opticos Design Inc. brings a fresh perspective to the challenge of rewriting the LDC, and their combination of experience, knowledge, proven approach, skill and personality will result in an outstanding updated and revised zoning code document for the City.

Community Involvement:

Staff has kept the citizens of Flagstaff informed of the LDC rewrite project primarily through regular updates in the quarterly Cityscape magazine and in frequent updates and discussions with members of the community.

The importance of community involvement in the lengthy process of rewriting the LDC was specifically called out as a necessity in the RFP and was a determinant in the selection process. Throughout the LDC rewrite process, there will be multiple opportunities for

Flagstaff residents to stay informed and participate in the project. Indeed, staff has already established a list of residents interested in either sitting on a Citizen Advisory Committee or working with staff and the consultant on more specific focus areas and areas of interest.

Financial Implications:

The Community Development Division has \$500,000 budgeted in account 001-6604-508-2206.

Options and Alternatives:

- 1) Remove the legal review and analysis by the consultant and instead use City legal staff to complete this work. This will reduce the contract price by \$40,000 to \$459,405.
- 2) Approve the full contract of \$499,405 awarded to Opticos Design Inc. as described in the attached Consultant Agreement.
- 3) Reject the RFPs as submitted and have City staff perform the services. However, this may result in a reduced scope of work and a longer time frame for the project as the City does not have the necessary staff and time to restructure and redraft the existing City of Flagstaff zoning ordinance to the full extent as proposed in the RFP.
- 4) Leave the existing City of Flagstaff zoning ordinance as is for the time being.
- 5) Delay making a decision on awarding this contract until after the mid-February budget retreat.

Attachments/Exhibits:

- Attachment "A" – Vendor Evaluation Scores
- Attachment "B" – Consultant Agreement



Department Head (Acknowledgment that all reviews have been completed and required approvals initialed below.)

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
RC by REC	BIDS/PURCHASES	12.30.08		FINANCE/BUDGET	
	GRANTS			CONTRACTS	
JPS	LEGAL	12/20/08	jc	IGAS	12-20-08

DATE OF COUNCIL APPROVAL: _____

Appendix A:

Summary Evaluation Matrix - RFP #28119 LDC/Zoning Ordinance Rewrite

December 22, 2008

CONSULTANT NAME	Evaluation Criteria						
	Relevant Experience	Team Qualifications	Responsiveness	Methodology	Public Participation Plan	Fee Structure	TOTAL
Kevin Gardner & Assoc.	84	96	82	61	23	48	394
Sera	70	78	72	71	26	42	359
Duncan Associates	62	60	100	88	36	66	412
Opticos Design Inc.	91	80	129	103	46	61	510
Placemakers, LLC	72	82	120	93	38	63	468
Gould Evans, LLC	83	75	114	94	35	65	466
Hall Alminana Inc.	79	78	120	102	38	59	476
Siegel Planning Services, LLC	70	74	77	57	31	56	365
Kendig Keast Collaborative	77	73	100	87	36	67	440

APPENDIX B:

**AGREEMENT FOR CITY
LAND DEVELOPMENT CODE / ZONING ORDINANCE REWRITE**

**CITY OF FLAGSTAFF
and
OPTICOS DESIGN, INC.**

This Agreement for the land Development Code / Zoning Ordinance Rewrite Consultant Services ("Agreement") is made by and between the City of Flagstaff ("City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and Opticos Design, Inc., a California corporation, with offices at 1285 Gilman Street, Berkeley, California 94706, effective as of the date written below.

RECITALS

A. The City desires to enter into this Agreement in order to obtain consultant services to perform a land development code / zoning ordinance rewrite as outlined in the Scope of Work/Specifications section of the RFP document; and

B. Provider has available and offers to provide the personnel necessary to provide said services within the required time in accordance with the Scope of Services included in this Agreement;

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, the City and Provider agree as follows:

1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following services:

1.1 Provider agrees to provide the services as set forth in detail in Exhibit "A" attached hereto and hereby incorporated as part of this Agreement. All of the terms and conditions set forth in the Request for Proposals ("RFP"), pertaining to the services in Exhibit "A", shall be incorporated in this Agreement as if fully set forth herein, with the following exceptions:

On page 10 of the RFP document, number 12, "Warranties", this term and condition is removed in its entirety.

On page 11 of the RFP document, number 17, "Ownership of Project Documents", the following language is being added as follows: "The city acknowledges that any and all information produced by Consultant under this agreement, including plans, specifications, data, reports, construction documents or electronic files ("documents"), are instruments of professional service. Nevertheless, such

documents will become the city's property as the particular stages of work are completed, during this engagement, and monies due to the Consultant for particular stages of work are paid. Consultant will be given unlimited rights to use any of the work products created for the City.

In the event the City consents to, allows, authorizes or approves of changes to such documents, and these changes are not approved in writing by the Consultant, the City recognizes that such changes and the results thereof are not the responsibility of the Consultant. Therefore, the City agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and sub-consultants (collectively, Consultant) against any claims, damages, liability or costs, including reasonable attorney's fees and defense costs, arising or allegedly arising from or in any way connected with the unauthorized reuse or modification of the documents by the City or any person or entity that acquires or obtains the documents from or through the City. In the event that Consultant's services are terminated in accordance with this agreement, this provision shall also apply to documents delivered to client after such termination. Such delivery shall be contingent upon payment in full of all monies then due Consultant.

Consultant retains ownership of the form-based code template and any other drawings, designs, data, photographs, reports and other documentation prepared prior to the start of this project or on behalf of another client, but subsequently used for this project."

On page 12 of the RFP document, number 24, "Cancellation For Lack Of Funding", the words at the end of the last sentence "subject to the availability of funds therefore" are removed.

On page 12 of the RFP document, number 26, "Termination For Convenience", the words "and accepted" at the end of the second sentence are removed. In addition, the words in the forth sentence "Title to all materials, work in progress, and completed but undelivered goods, shall pass to the City after costs are claimed and allowed" are removed.

On page 12 of the RFP document, number 27, "Termination For Cause", the final sentence is deleted, and the following language is added: "In the event of termination for cause, the City shall only be liable to proposer for amounts due for satisfactory work completed in accordance with the contract. Proposer may be liable to the City for any and all damages sustained by reason of the default which gave rise to the termination. The judgment of unsatisfactory performance by the Contract Administrator must be based on the expectations setforth in the RFP, proposal, and contract and the Consultant has the right to appeal this judgment."

"Consultant may terminate this agreement upon giving the City seven (7) calendar days prior written notice for any of the following: (1) breach by the City of any material term of this agreement, including but not limited to payment terms (2) transfer of ownership of the project by the City to any other persons or entities not a

party to this agreement without the prior written agreement of the Consultant (3) material changes in the conditions under which this agreement was entered into, coupled with the failure of the parties here to reach accord on the fees and charges for any additional services required because of such changes."

On page 17 of the RFP document, number 40C.1.a, "Other Insurance Requirements", the words "including the City's general supervision of proposer;" are removed.

On page 17 of the RFP document, number 40D, "Notice Of Cancellation", the following changes are made: In the first sentence, after "thirty (30) days prior written notice", the following language is added: "and ten (10) days prior written notice for non-payment of premium". Also, in the first sentence, "reduced in coverage or in limits" is deleted, and the following language is added at the end of the first sentence: "Consultant shall provide a (30) days written notice to City prior to implementation of a reduction of limits or material change of insurance coverage as specified herein."

The fee in Exhibit A is based on current flight costs, currently estimated at \$500/flight/person. If Consultant's average flight costs with 21-day advance booking exceed \$750, Consultant will have the right to renegotiate the expense budget with the City.

2. COMPENSATION OF PROVIDER

2.1 Provider agrees to provide all of the services set forth in Exhibit "A" for the not to exceed firm fixed fee of **Four Hundred Ninety Nine Thousand Four Hundred and Five Dollars** (\$499,405). Consultant will be paid progress payments as phases of the project are completed and accepted by the City.

3. RIGHTS AND OBLIGATIONS OF PROVIDER

3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the City. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement.

3.2 Provider's Control of Work. All services to be provided by Provider shall be performed as determined by the City in accordance with the Scope of Services set forth in Exhibit "A." Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel.

3.3 Reports to the City. Although Provider is responsible for control and supervision of work performed under this Agreement, the services provided shall be acceptable to the City and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the City and the right of the City, as set forth in the Scope of Services, and the right of the City to audit Provider's records.

3.4 Compliance with All Laws. Provider shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement.

4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and sent by certified or registered mail as follows:

To the City's Authorized
Representative:

Rick Compau, C.P.M.
Director of Purchasing
City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001
928/779-7661

To Provider:

Daniel Parolek, Principal
Opticos Design, Inc.
1285 Gilman Street
Berkeley, California 94706
510/558-6957

5. INDEMNIFICATION

Proposer (hereinafter referred to as "Indemnitor") agrees to indemnify, save, and hold harmless the City, any jurisdiction or agency issuing permits for any work under this Agreement, and their respective directors, officers, officials, agents, employees and volunteers (hereinafter referred to as "Indemnitee") from and against any and all liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation and litigation) (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage to the extent caused by the negligent act, omission, negligence or misconduct of the Indemnitor or any of Indemnitor's directors, officers, agents, employees or volunteers. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Proposer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree in effect at the time services are

rendered. Proposer shall be responsible for defense and judgment costs where this indemnification is applicable.

6. INSURANCE

Provider and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Provider, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Provider from liabilities that may arise out of the performance of the work under this Agreement by Provider, its agents, representatives, employees or subcontractors and Provider is free to purchase additional insurance as may be determined necessary.

A. Minimum Scope and Limits of Insurance. Provider shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 50,000
Medical Expense (Any one person)	Optional
2. Automobile Liability - Any Auto or Owned, Hired and Non-Owned Vehicles
(Form CA 0001, ed. 12/93 or any replacement thereof.)

Combined Single Limit Per Accident for Bodily Injury and Property Damage	\$1,000,000
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3. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$ 500,000
Disease-Each Employee	\$ 500,000
Disease-Policy Limit	\$ 500,000
4. Professional Liability \$1,000,000

B. SELF-INSURED RETENTIONS/DEDUCTIBLES: Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers.

C. OTHER INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:

- a. The City of Flagstaff, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of: activities performed by, or on behalf of, the Provider; including the City's general supervision of the Provider; products and completed operations of the Provider; and automobiles owned, leased, hired or borrowed by the Provider.
- b. The Provider's insurance shall contain broad form contractual liability coverage.
- c. The City, its officers, officials, agents, employees and volunteers shall be additional insureds to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.
- d. The Provider's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, or volunteers shall be in excess to the coverage of the Provider's insurance and shall not contribute to it.
- e. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- f. Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
- g. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from work performed by the Provider for the City.

2. **Workers' Compensation and Employer's Liability Coverage:** The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees and volunteers for losses arising from work performed by the Provider for the City.
- 6.1 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the City. Such notice shall be sent directly to:
- Rick M. Compau, Purchasing Director**
City of Flagstaff, Purchasing Division
211 W. Aspen Ave.
Flagstaff, Arizona 86001
- 6.2 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the City. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency.
- 6.3 Verification of Coverage. Prior to commencing work or services, Provider shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements shall be received and approved by the City before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Rick M. Compau, Purchasing Director, City of Flagstaff, Purchasing Division, 211 W. Aspen Ave., Flagstaff, AZ. 86001.** The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to request and receive within ten (10) days, complete, certified copies of all insurance policies required by this Agreement at any time. The City shall not be obligated, however, to review same or to advise Provider of any deficiencies in such policies and endorsements, and such receipt shall not relieve Provider from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Provider's obligations under this Agreement.

- 6.4 Subcontractors. Providers' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Provider shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- 6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the City Attorney's office, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, but may be made by administrative action.

7. DEFAULT AND TERMINATION

- 7.1 Events of Default Defined. The following shall be Events of Default under this Agreement:
- 7.1.1 Any material misrepresentation made by Provider to the City;
 - 7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:
 - 7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;
 - 7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider's reasonable control;
 - 7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the City;
 - 7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the City as unsatisfactory or erroneous;
 - 7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;
 - 7.1.2.6 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and
 - 7.1.2.7 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies. The following shall be remedies under this agreement.

7.2.1 Upon the occurrence of any Event of Default, the City may declare Provider in default under this Agreement. The City shall provide written notification of the Event of Default and any intention of the City to terminate this Agreement. Upon the giving of notice, the City may invoke any or all of the following remedies:

7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;

7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;

7.2.1.3 The right to monetary damages;

7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;

7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the City; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.

7.3 Right to Offset. Any excess costs incurred by the City in the event of termination of this Agreement for default, or in the event the City exercises any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before termination of this Agreement for default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the City the balance upon written demand from the City.

8. GENERAL PROVISIONS

8.1 Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona. Provider hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

8.3 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

8.4 Severability. If any part of this Agreement is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be assigned by either the City or Provider without prior written consent of the other.

8.6 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

8.7 Authority to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Agreement.

8.8 Integration. This Agreement represents the entire understanding of City and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.

8.9 Nonappropriation. In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, the City shall notify Provider of such occurrence, and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments shall be made or due to Provider under this Agreement beyond these amounts appropriated and budgeted by the City to fund payments under this Agreement.

8.10 Mediation. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall take place in Flagstaff, Arizona, shall be self-administered, and shall be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision shall not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

8.11 Subcontractors. This Agreement or any portion thereof shall not be subcontracted without the prior written approval of the City. No Subcontractor shall, under any circumstances, relieve Provider of its liability and obligation under this Agreement. The City shall deal through Provider and any Subcontractor shall be dealt with as a worker and representative of Provider. Provider assumes responsibility to the City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

8.12 Waiver. No failure to enforce any condition or covenant of this Agreement by the City shall imply or constitute a waiver of the right of the City to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor shall any waiver by the City of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

9. DURATION

This Agreement shall become effective on and from the day and year executed by the parties, indicated below, and shall continue in force until _____, 200__, unless sooner terminated as provided above.

City of Flagstaff

Opticos Design, Inc.

Kevin Burke, City Manager

Daniel Parolek, Principal

Attest:

City Clerk

Approved as to form:

City Attorney

Date of Execution:

EXHIBIT A
SCOPE OF WORK

EXHIBIT A:

Flagstaff Land Development Code Rewrite Scope of Work		SM =City Staff Mtg., PM =Public Mtg., TAC=Technical Advisory Committee Mtg. CAC=Citizen Advisory Committee	Total Fee & Expenses
Opticos Design, Inc.			
Task 1: Background Review and Initial Public Participation (3 Months, estimated Late January – Late April 2009)			\$82,930
1.1	Base information gathering and mapping		
1.2	Visit 1 (1 day): Meet with City staff: Issue Identification and project kick off		
a.	Review the City's objectives for the Development Code, particularly with respect to issues of consistency with the Regional Plan and the objectives and outline of the scope of work in the RFP	SM	
b.	Tour the City with City staff		
c.	Refine and detail the project scope and schedule as necessary		
d.	Inventory problems and issues associated with present City land use and development regulations and the Regional Plan		
e.	Discuss the City's preferences regarding how the specific regulatory issues identified in the City's RFP and any other issues identified by staff will be addressed in the Development Code; City staff to provide a memo with an overview of what is working and what is not within the existing code		
f.	Review and discuss the public participation program including the formation of a citizen Advisory Committee		
g.	Review City staff's outline of relevant zoning and policy issues (City staff to provide)		
h.	Discuss existing and proposed code framework		
1.3	Collect, review, and analyze background information		
a.	Review all relevant City documents (to be provided by City staff), including the Regional Plan and Development Code		
b.	Review recent and proposed amendments to the LDC (to be provided by City staff)		
	a. Amendments to the City's Workforce Housing Incentive Policy		
	b. Amendments to the LDC to provide enhanced opportunities for public participation		
	c. Ongoing work on the Character District study for the City of Flagstaff		
	d. Ongoing work on the Infill Incentive District study within the City		
	e. Ongoing work with neighborhood plans, such as in La Plaza de Vieja		
c.	Thorough review and analysis of the LDC to determine how best it may be rewritten, restructured, codified and improved		
d.	Create development code analysis diagrams and spreadsheet of existing zones		
1.4	Visit 2 (1.5 - 2 days): Initiate public participation and macro-scale documentation		
a.	Conduct one-on-one interviews with stakeholders: 1/2 – 1 day with a min. of 3 people from consultant's team interviewing	PM	
b.	Attend meeting with Technical Advisory Committee (TAC) as needed (led by City staff) to discuss our approach	TAC	
c.	Attend meeting with City Staff and legal department to discuss issues around Proposition 207 and other legal issues that will effect the code rewrite	SM	
d.	Present at a public workshop with Planning and Zoning Commission and Citizens Advisory Committee (CAC) on "What is a Form Based Code?" and an outline of the coding process (invite other boards and commissions as needed)	PM	
e.	Participate in a press conference with local officials as necessary		
f.	Initiate macro-scale documentation (City-wide analysis)		
1.5	Prepare summary memo		
a.	Highlight issue areas of code		
b.	Analyze consistency with the Regional Plan, additions to the code, consistency with State law		
c.	Identify preliminary focus areas for Form-Based Code application		
1.6	Create and provide content as needed for web site update, community events, newsletters, media outreach, etc. The creation and organization of these items and events will be the responsibility of the City staff.		

Deliverables: Detailed report including the following:

- a. A recommendation on how to develop an adoptable zoning ordinance that includes all the needed restructuring of the current code, retaining, amending or discarding sections of the code as necessary, and proposing new sections where needed to improve its clarity and user-friendliness.
- b. A recommendation on how to proceed with a comprehensive rewrite of the LDC as a innovative integrated user-friendly zoning code given the possible implications of ARS Sections 12.1131 – 12.1138 (Proposition 207).
- c. A recommendation of the zoning method(s) best suited to the needs of the City with an emphasis placed upon integration of Euclidian and performance based zoning techniques, and the incorporation of Smart Growth principles and form-based coding techniques.
- d. A recommendation on how to create a manageable number of zoning districts within the City.
- e. A recommendation on how to streamline and improve current development review and approval processes.
- f. A recommendation on existing ordinance language that is no longer relevant or responsive to current development and market needs or the City's goals and desires.
- g. A recommendation on how to structure the public participation and involvement process to successfully involve the public in a meaningful and effective way using appropriate public participation techniques.
- h. A recommendation on possible workforce/affordability initiatives and how to integrate them into the LDC.
- i. A recommendation on how the consultant will present the completed work product to the City, suggestions on the role of City staff in the process of rewriting the LDC, and the number and timing of public hearing presentations with the Planning and Zoning Commission and City Council, etc.
- j. An extensive discussion of; Additional issues identified by the planning consultant and City staff either before or during the course of the work; Integration and coordination of the various regulatory documents/approval procedures; The recommended process for successful adoption and an implementation plan for the new zoning ordinance.

Task 2: Documentation and Analysis (4-6 months, estimated March – August 2009)		\$81,700
2.1	Complete macro-scale (city wide) documentation and analysis in order to better understand and inform the selection of form-based applications	
a.	Framework Plan: Neighborhoods, Districts and Corridors	
b.	Regional Transportation Network	
c.	Natural Systems analysis	
d.	Infrastructure analysis	
e.	Transect Photo Sheets	
2.2	Visit 3 (3 days): Micro-scale (streets, blocks and lots) documentation (Note: City staff to be engaged in this process [Tasks 2.2 & 2.3]. Intent is for City staff to participate and complete 50% of micro-scale documentation under guidance from consultant.)	
a.	Tour city and potential form-based focus and/or application areas with City staff	SM
b.	Meet with City staff to discuss sample areas for analysis	SM
c.	Meet with CAC, as necessary	CAC
d.	Walk analysis areas with City staff and review methodology for analysis	SM
e.	City staff (50%) and consultant (50%) to complete micro-scale documentation	
f.	Wrap-up meeting with City staff. Discuss initial selection of focus areas	SM
2.3	Complete micro-scale documentation and analysis	
a.	Block Documentation Matrix for each sampling area	
b.	Presentation boards for sampling blocks	
c.	Compile Existing Transect Level Matrix for each Transect level	
d.	Summarize above into Existing Transect Matrix	
e.	Repeat process for building types, as necessary	
f.	Repeat process for street types, as necessary	
g.	Repeat process for frontage types, as necessary	
h.	Repeat process for other micro-scale elements, as necessary	
2.4	Conference call with City staff to review documentation results	SM
2.5	Visit 4 (1.5 days)	
a.	Attend joint Public Workshop with Planning and Zoning Commission, invite other boards and commissions as needed, to present findings, solicit input from the public, and describe charrette process	PM
b.	Present and discuss initial draft chapter(s) (1-2 chapters)	SM
c.	Meet with CAC, as necessary	CAC
d.	Meet with City staff to finalize selection of focus areas for charrette: 2-3 areas total depending on geographic size and planning complexity	SM
e.	Attend a meeting with TAC as needed to discuss results	TAC
2.6	Revise documentation and analysis as necessary based on comments from tasks above (one round of revisions: 16 hours max.)	
2.7	Create and provide content as needed for web site update, community events, newsletters, media outreach, etc. The creation and organization of these items and events will be the responsibility of the City staff.	
Deliverables: Framework Plan; Neighborhoods, Districts, Corridors, and environmental considerations; Transect Photo Sheets; Block Documentation matrices; Presentation boards for sampling blocks; Existing Transect Level Matrix for each Transect level; Existing Transect Matrix; Summary sheets for other micro-scale elements, such as building types and frontage types.		

Task 3: Visit 5: Form-Based Code Charrette for Focus Areas (3-4 days) (estimated September – November 2009)		\$97,775
3.1 Opening Presentation to engage stakeholders and the public (include Planning and Zoning Commission and Citizens Advisory Committee, and other boards and commissions as needed)	PM	
a. Define: Charrette; Form-Based Code; Roles of consultant, City and residents		
b. Present documentation, analysis, and precedents		
3.2 Conduct stakeholder meetings: Day 1 and as needed throughout charrette	PM	
3.3 Meet with City staff as needed during charrette to discuss progress	SM	
3.4 Meet with TAC during the charrette to discuss street standards, transportation planning, pedestrian and bicycle connectivity as it applies to the Smart Growth Objectives of the overall process	TAC	
3.5 Present and discuss 1 - 2 draft code chapters	SM	
3.6 Final public presentation on final day to present charrette results (include Planning and Zoning Commission and Citizens Advisory Committee, and other boards and commissions as needed)	PM	
3.7 Prepare charrette summary document and memo (6-8 weeks after the charrette)		
3.8 Create and provide content as needed for web site update, community events, newsletters, media outreach, etc. The creation and organization of these items and events will be the responsibility of the City staff.		
<i>Deliverables: Final Charrette presentation; Charrette summary document (a compilation of all graphics created at the charrette, typically including: Conceptual site plans and illustrative drawings for the focus areas; Initial draft of Regulating Plans; Illustrative street designs; and Initial draft of Building Form-Standard content for each of the focus areas) and 1-2 page charrette summary memo.</i>		

Task 4: Development Code Preparation: Preliminary Draft (7-10 months overlapping with Task 2, estimated June 2009 – March 2010)		\$179,070
4.1 Visit 6 (1 day): Charrette Summary Document Presentation and Code Sections		
a. Attend joint Public Workshop with boards and commissions to present charrette summary document and discuss draft code chapters	PM	
b. Meet with City staff to discuss code preparation (Some Administrative Draft sections may be completed by this time)	SM	
4.2 Prepare draft annotated outline, style sheet, and sample chapter		
4.3 Prepare Administrative Draft of primary sections of the code		
a. General to Zones (General development standards and specific use standards)		
b. Specific to Zones (Zoning district provisions)		
c. Procedures and Nonconformities		
<i>Note: The final selection of primary sections may change as the code concept and outline is refined. Legal review will occur as sections are drafted.</i>		
4.4 Conference calls with City staff to review Administrative Draft of primary sections and receive feedback (up to 4 conference calls)	SM	
4.5 Create complete Preliminary Draft		
4.6 Create a draft zoning map/ regulating plan in GIS		
4.7 Complete legal review of draft		
4.8 Visit 7 (1 day): Meetings to review complete Preliminary Draft		
a. Meet with City Staff to discuss complete Preliminary Draft	SM	
b. Attend meeting with TAC and CAC (if necessary) to review complete Preliminary Draft (led by City staff)	TAC/CAC	
4.9 Create and provide content as needed for web site update, media outreach, etc.		
<i>Deliverables: Draft annotated outline; style sheet; and sample chapter; Administrative Draft of primary sections of the document; Complete Preliminary Draft.</i>		

Task 5: Public Review and Adoption		\$57,930
5.1	Prepare the Public Review Draft (60 hours max.)	
5.2	Visit 8: Attend public workshop with boards and commissions to review Public Review Draft	PM
a.	Meet with City staff to discuss implementation of comments	SM
5.3	Prepare final Draft Development Code (40 hours max.)	
5.4	Complete legal review of draft	
5.5	Visits 9, 10, 11: Attend up to 3 additional public meetings with boards and commissions to receive further comments and to introduce an ordinance to adopt the Code. (Additional meetings beyond these 3 will be attended as needed on a time and expenses basis.)	PM
5.6	Prepare Final Code Document and Zoning map / regulating plan (20 hours max.)	
<i>Deliverables: Public Review Draft; Draft Development Code; Final Code Document, Zoning and Regulating Plan.</i>		

Total Proposed Fee & Expenses*	\$499,405
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Proposal:

This proposal is valid through March 1, 2009, but if contract is signed after Jan. 15, schedule will need to be adjusted to compensate for later start.

Compensation for Services:

Consultant shall be paid on a fee basis for performance of services under this agreement in accordance with the terms of this table.

Additional Terms:

1. City will provide space, food, and equipment for the charrette and other meetings. (Consultant to bring computers and drafting supplies.) Consultant will not be responsible for any such planning or expenses.
2. City will be responsible for all public outreach and marketing, including the project web site.
3. All dates are estimates and dependent on date of contract signing and delivery of all background materials and subsequent reviews in a timely manner to the consultant.
4. Any additional tasks performed outside of those specified above, such as attending additional meetings or completing additional revisions beyond the hours or number of revisions specified above, will be compensated at the hourly rates set forth below (Valid through June 2010):

Principal: \$175/hr
Senior Associate: \$160/hr
Associate: \$145/hr
Senior Designer: \$130/hr
Designer: \$115/hr
Administration: \$85/hr

5. In the interest of environmental considerations, the consultant will provide one (1) double-sided, bound, printed copy on minimum 30% post-consumer recycled paper and a PDF file of each deliverable. At the end of the project, Consultant will provide and editable InDesign file of the Final Code Document.

* Does not include any additional hourly fees as noted above.

Possible Additional Line Items Not Included in the Scope
A. Green Building Standards
B. Stormwater BMPs by Transect Zone
C. City-wide Thoroughfare Standards
D. Architectural Standards/Pattern Book
E. Green Streets Plan